

1 IN THE HOUSE

BY GOLL AND ULMER

2

HOUSE BILL NO. 311

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to protection of adults with dis-
7 abilities who are victims of abuse, neglect, or
8 exploitation."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. POLICY AND PURPOSES. (a) The legislature declares that
11 the public policy of this state is to protect physically or mentally dis-
12 abled adults from abuse, neglect, or exploitation by those responsible for
13 their care at home or in residential institutions. Disabled adults are
14 entitled to live in safe, sanitary surroundings necessary for their care
15 and protection.

16 (b) The purposes of this Act are to encourage the expeditious report-
17 ing and investigation of suspected physical, mental, or sexual abuse,
18 neglect, or exploitation of disabled adults; to provide for the protection
19 of disabled adults when appropriate; and to protect the civil and constitu-
20 tional rights of disabled adults.

21 * Sec. 2. AS 47 is amended by adding a new chapter to read:

22 CHAPTER 22. PROTECTION OF DISABLED ADULTS.

23 Sec. 47.22.010. REPORTS OF HARM. (a) The following persons
24 who, in the performance of their professional duties, have reasonable
25 cause to believe that a disabled adult has suffered harm as a result
26 of abuse, neglect, or exploitation shall, as soon as practicable after
27 first having cause for the belief, report the harm to the Department
28 of Health and Social Services:

29 (1) a physician or other licensed health care provider;

- 1 (2) a mental health professional as defined in AS 47.30.-
2 915;
- 3 (3) a pharmacist;
- 4 (4) an administrator or employee of a nursing home, resi-
5 dential care, or health care facility;
- 6 (5) a caretaker of the disabled adult;
- 7 (6) a guardian or conservator of the disabled adult;
- 8 (7) a police officer as defined in AS 18.65.290;
- 9 (8) a village public safety officer;
- 10 (9) a village health aide;
- 11 (10) a social worker;
- 12 (11) a member of the clergy;
- 13 (12) a staff employee of a program or project serving dis-
14 abled adults;
- 15 (13) a licensed foster care provider;
- 16 (14) a paid employee of a domestic violence and sexual
17 assault program or a crisis intervention and prevention program as
18 defined in AS 18.66.900;
- 19 (15) an employee of a homemaker program or home health aide
20 program;
- 21 (16) an emergency medical technician or paramedic in the
22 mobile intensive care program.
- 23 (b) A report of harm made under this section may include the
24 name and address of the person reporting the harm and shall include
- 25 (1) the name and address of the disabled adult;
- 26 (2) information relating to the nature and extent of the
27 harm;
- 28 (3) other information that the person reporting the harm
29 believes might be helpful in an investigation of the case or in

1 providing protection for the disabled adult.

2 (c) This section does not prohibit a person listed in (a) of
3 this section from reporting cases of harm to a disabled adult that
4 have come to the person's attention in a nonprofessional capacity, nor
5 does it prohibit any other person from reporting harm to a disabled
6 adult that the person has reasonable cause to believe is a result of
7 abuse, neglect, or exploitation.

8 (d) If immediate action is necessary to protect the disabled
9 adult from imminent physical harm, the person shall make the report of
10 harm to a police officer as defined in AS 18.65.290. The police
11 officer shall take immediate action to protect the disabled adult and
12 shall, at the earliest opportunity, notify the department.

13 (e) A person who fails to comply with this section is guilty of
14 a class B misdemeanor.

15 Sec. 47.22.020. IMMUNITY FROM LIABILITY; RETALIATION PROHIBITED.

16 (a) A person who, in good faith, makes a report of harm to a disabled
17 adult under this chapter, or who participates in judicial proceedings
18 related to the submission of reports under this chapter, is immune
19 from any civil or criminal liability that might otherwise be incurred
20 or imposed.

21 (b) An employer or supervisor of a person who, in good faith,
22 makes a report of harm to a disabled adult under this chapter may not
23 discharge, demote, transfer, reduce pay or benefits or work privileges
24 of, prepare a negative work performance evaluation of, or take other
25 detrimental action against the person because of the report. The
26 person making the report may bring a civil action for compensatory and
27 punitive damages against an employer or supervisor who violates this
28 subsection. In the civil action there is a rebuttable presumption
29 that the detrimental action by the employer or supervisor was

1 retaliatory if it was taken within 90 days after the report of harm
2 was filed.

3 Sec. 47.22.030. ACTION ON REPORTS. (a) Within 24 hours after
4 receiving a report of harm, the department shall promptly initiate an
5 investigation to determine the physical or economic condition of the
6 disabled adult named in the report and whether action or services are
7 needed for the protection of the disabled adult. The department shall
8 make a reasonable effort to personally interview the disabled adult
9 during the investigation.

10 (b) The department shall prepare a written report of the in-
11 vestigation, including findings, recommendations, and a determination
12 of whether and what kind of protective services are to be offered to
13 the disabled adult. The department shall send a copy of the investi-
14 gation report to the Department of Law for possible criminal prose-
15 cution if the report of harm is confirmed to be true.

16 (c) The department shall immediately terminate an investigation
17 under this section upon the request of the disabled adult who is the
18 subject of a report of harm. However, if the department has reason-
19 able cause to believe that the disabled adult is incapacitated, the
20 department may petition the superior court under AS 13.26 for appoint-
21 ment of a guardian or temporary guardian for the disabled adult for
22 the purpose of obtaining consent to continue the investigation.

23 (d) Upon request, the person who reported harm to the disabled
24 adult shall be notified of the status of the investigation.

25 (e) This section does not limit the authority of the Department
26 of Law or the court to protect a disabled adult.

27 Sec. 47.22.040. PROTECTIVE SERVICES. (a) The department shall
28 provide available protective services to a harmed disabled adult if
29 and to the extent to which the disabled adult consents. If the

1 department has reasonable cause to believe that the disabled adult
2 lacks the capacity to consent to receiving protective services, it may
3 petition the superior court under AS 13.26 for appointment of a guard-
4 ian or temporary guardian for the disabled adult for the purpose of
5 obtaining consent.

6 (b) If a disabled adult who has consented to receiving protec-
7 tive services is prevented by a caretaker from receiving the services,
8 the department may assist the disabled adult to petition the superior
9 court for an injunction restraining the caretaker from interfering
10 with the provision of protective services to the disabled adult.

11 Sec. 47.22.050. CASE REVIEW. The department shall, not later
12 than 90 days after initiating the provision of protective services to
13 a disabled adult, initiate a review of the case to determine whether
14 continuation or modification of protective services that are being
15 provided is warranted. The department shall reevaluate the case every
16 90 days thereafter until the case is closed.

17 Sec. 47.22.060. CONFIDENTIALITY OF REPORTS. (a) Investigation
18 reports and reports of harm filed under this chapter are confidential
19 and are not subject to public inspection and copying under AS 09.25.-
20 110 - 09.25.125. However, in accordance with this chapter and depart-
21 ment regulations adopted under this chapter, investigation reports may
22 be used by appropriate governmental agencies inside and outside the
23 state in connection with investigations or judicial proceedings in-
24 volving harm to a disabled adult.

25 (b) The department shall disclose a report of harm if the dis-
26 abled adult who is the subject of the report consents in writing. The
27 department shall, upon request, disclose the number of reports of harm
28 that have been verified.

29 Sec. 47.22.070. AUTHORITY OF THE DEPARTMENT. In performing its

1 duties under this chapter, the department may, subject to a disabled
2 adult's consent, initiate actions necessary to assure the health,
3 safety, and welfare of the disabled adult, including the transfer of
4 the disabled adult from a nursing home, residential care, or health
5 care facility.

6 Sec. 47.22.080. REGULATIONS. The commissioner may adopt regula
7 tions to implement this chapter.

8 Sec. 47.22.090. QUARTERLY REPORT. Each quarter the department
9 shall submit to the protection and advocacy system established under
10 AS 47.80.020 a statistical report of the department's activities
11 related to the protection of disabled adults in the state. The report
12 may not disclose the identity of victims or perpetrators of the harm.

13 Sec. 47.22.900. DEFINITIONS. In this chapter

14 (1) "abuse" means the intentional infliction of physical
15 pain, injury, or mental anguish by a caretaker, sexual abuse by a
16 caretaker, unreasonable confinement by a caretaker, or the deprivation
17 by a caretaker of services that are necessary to maintain the physical
18 and mental health of a disabled adult;

19 (2) "caretaker" means a person who is responsible for the
20 care of a disabled adult as a result of family relationship, or who
21 has assumed responsibility for the care of a disabled adult voluntari-
22 ly, by contract, or by court order;

23 (3) "commissioner" means the commissioner of health and
24 social services;

25 (4) "department" means the Department of Health and Social
26 Services;

27 (5) "developmental disability" means a severe, chronic
28 disability that

29 (A) is attributable to a mental or physical impairment

1 or combination of mental and physical impairments;

2 (B) is manifested before a person is 22 years of age;

3 (C) is likely to continue indefinitely;

4 (D) results in substantial functional limitations in

5 three or more of the following areas of major life activity:

6 (i) self-care;

7 (ii) receptive and expressive language;

8 (iii) learning;

9 (iv) mobility;

10 (v) self-direction;

11 (vi) capacity for independent living;

12 (vii) economic sufficiency; and

13 (E) reflects a person's need for a combination and

14 sequence of special, interdisciplinary, or generic care, treat-

15 ment, or other services that are of life-long or extended dura-

16 tion and are individually planned and coordinated;

17 (6) "disabled adult" means a person 18 years of age or

18 older who manifests a degree of impairment by reason of limited mental

19 or physical function as a result of a developmental disability, acci-

20 dent, illness, or other cause;

21 (7) "exploitation" means the illegal or improper use of a

22 disabled adult or the resources of a disabled adult by a caretaker for

23 the caretaker's or another person's profit or advantage;

24 (8) "harm" means abuse, neglect, or exploitation by a

25 caretaker;

26 (9) "incapacitated" means a person's ability to receive and

27 evaluate information or to communicate decisions is impaired for

28 reasons other than minority to the extent that the person lacks the

29 ability to obtain the essential requirements for physical health or

1 safety without court-ordered assistance;

2 (10) "neglect" means the failure by a caretaker to provide
3 services necessary to maintain the physical and mental health of a
4 disabled adult;

5 (11) "protective services" means services intended to pre-
6 vent or alleviate harm resulting from abuse, neglect, or exploitation.

7 * Sec. 3. AS 47.24.100(6) is amended to read:

8 (6) "elderly person" means a resident of the state [ALASKA]
9 who is 65 years of age or older and who is not a disabled adult as
10 defined under AS 47.22.100;